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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR - 7 1997

In the Matter of)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

Federal Communications Commission
Office of Secretary

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION
IN OPPOSITION TO PETITION FOR EXPEDITED WAIVER OF THE
10-DIGIT DIALING REQUIREMENT**

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby files these comments in response to the Petition of the Pennsylvania Public Utility Commission (PA PUC) For Expedited Waiver of the 10-Digit Dialing Requirement of 47 C.F.R. Sec. 52.19 For 412 NPA Overlay Area Code Relief (Petition).

MCI opposes the PA PUC's request for an expedited waiver of the 10-digit dialing requirement in the 412 area code overlay area. The PA PUC bases its waiver petition on the mistaken belief that the anti-competitive impacts of an overlay with 7-digit dialing have been eliminated. Nothing could be further from the truth.¹

The PA PUC makes two arguments in support of its waiver request. First, it asserts that the advent of interim and long term local number portability eliminates the Commission's

¹The significant anti-competitive impact of implementation of an overlay plan without mandatory 10-digit dialing was summarized by Commissioner John Hanger in a separate statement in the PA PUC's 412 Area Code Order. In that statement, Commissioner Hanger stated that under the Order, ". . . an existing monopoly customer can maintain 7 digit dialing so long as they stay a customer of the local phone monopoly. If that customer were to switch to a new phone company and receive a new telephone number and area code, then the customer would have to start 10 digit dialing. Obviously, that is a substantial and unfair competitive advantage for the existing monopolies." *Separate Statement of Commissioner John Hanger*, p. 3, attached as Exhibit A.

concern that without mandatory 10-digit dialing in the overlay area code, new entrants will be placed at a significant competitive disadvantage. Second, the PA PUC argues that the anti-competitive effects of the overlay without mandatory 10-digit dialing are alleviated since there are sufficient NXXs available to new entrants in the 412 area code. Those arguments are unsupported by the facts, and thus, the PUC's request for waiver should be denied.

I. **INTERIM AND LONG TERM LOCAL NUMBER PORTABILITY DO NOT ELIMINATE THE ANTICOMPETITIVE EFFECTS OF AN OVERLAY WITHOUT MANDATORY 10-DIGIT DIALING.**

The PA PUC argues that the availability of number portability eliminates the Commission's and new entrants' concerns that an overlay without 10-digit dialing is anti-competitive.² The PA PUC argues that with number portability, existing Bell Atlantic customers in the 412 area code can switch to the local services of a new entrant, while keeping their local telephone numbers. Thus, the PA PUC concludes that the anti-competitive concerns are "significantly diminished."³ The PA PUC's conclusion is severely flawed because it ignores the fact that a significant portion of new entrants' customers will be served by new telephone numbers, as opposed to existing numbers that are also ported. That is the case because many consumers prefer to test a new entrant's services by augmenting their existing service with additional lines from the new entrant, rather than changing all of their existing telephone

² *Petition*, p. 6.

³ *Id.*

numbers. The ability of consumers to try a new entrant's services before migrating all of their services is critical to the ability of new entrants to get a foothold in the local market place, and therefore, is critical to the growth of local competition.

It is vital that new entrants have new numbers that do not have dialing disparity associated with them. Given that the PA PUC chose, over MCI's objection, to implement an overlay, instead of the more competitively neutral geographic split in the 412 area code, then new entrants' customers should not have to dial more numbers than Bell Atlantic's customers in order to complete a call. The only way to ensure such neutrality, even in a market that contemplates local number portability, is to require mandatory 10-digit dialing in the new overlay area codes.⁴

II. LACK OF MANDATORY 10-DIGIT DIALING FOR ALL CONSUMERS WOULD PLACE NEW ENTRANTS AT A SIGNIFICANT COMPETITIVE DISADVANTAGE.

The PA PUC's reliance in support of its petition on the number of new entrants' NXXs in the 412 area code is misplaced. That number is insignificant since it does not positively influence the ability of new entrants to offer their customers the opportunity to complete calls with 7-digit dialing. The importance of the number of NXXs assigned to each new entrant is also significantly diminished by the prohibition against new entrants serving more than one rate

⁴The PA PUC's position is further weakened by the Commission's recent announcement of extensions of the first two implementation phases of local number portability, thus further delaying the time when permanent number portability will be available.

center per NXX. Thus, regardless of the number of NXXs assigned to MCI in the 412 area code, MCI will still only be able to serve a limited percentage of the market area because it can only provide service in one rate center.⁵

Finally, the PA PUC argues that since 27% of the NXX codes in the 412 area code are assigned to new entrants, those new entrants have more than enough numbers to assign to their customers.⁶ The inclusion in this category of facilities-based and wireless providers together is misleading since it grossly distorts the number of NXXs that are actually available to facilities-based providers, such as MCI. In fact, MCI's data demonstrates that 190 of the NXXs assigned to new entrants in the 412 area code are assigned to wireless providers. The significant number of 412 NXXs held by well-established cellular and paging companies has no impact on the number of 412 NXXs held facilities-based new entrants.

⁵ By way of illustration, if a new entrant has ten NXXs, and there are approximately 149 rate centers, as there are in the 412 area code, that new entrant is unable to offer any 412 numbers (and thus, any 7-digit dialing) in approximately 90% of the market. This significant dialing disparity is precisely what the Commission's mandatory 10-digit dialing requirement seeks to avoid.

⁶ The PA PUC states that according to the Bell Atlantic Code Administrator, as of December 31, 1996, of the 755 usable NXX codes in the 412 area code, 27% were assigned to new entrants. Petition, p. 7. Included in this 27% figure are NXXs assigned to "CLECs (Including wireless providers)". *Id.*

WHEREFORE, for the foregoing reasons, the Commission should deny the PA PUC's request for expedited waiver of the 10-digit dialing requirements for the overlay in the 412 area code.

Respectfully submitted,



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EXHIBIT A

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3365

PETITION OF NPA RELIEF COORDINATOR
RE: 412 AREA CODE RELIEF PLAN

PUBLIC MEETING -

JUNE 26, 1996

JUN-96-L-526

SECRET NO. P-00961027

STATEMENT OF COMMISSIONER JOHN J. KELLY

Like many people across the country, Pennsylvanians are increasingly using the telecommunications network to become more efficient in their jobs and to better use time at home. The benefits of this increasing use of the network are real and measurable. Unfortunately, problems associated with the increased use of the network can be real and measurable. Today, the Commission deals with one of these problems, a telephone number shortage in the 412 area code.

To put it plainly, there is no painless answer to this shortage. No matter what course the Commission adopts, the Commission's decision will inconvenience some consumers.

The cause of the number shortage is the communications explosion that is rapidly sweeping through society. Second phone lines are being installed at a record rate. Faxes, beepers, and other products are proliferating. The result is that the supply of numbers is being gobbled by number-hungry consumers.

Indeed, the supply of numbers is declining so rapidly that the days of 7 digit phone calling may be nearly over. Certainly the days when an area code would last 30 years or so are long gone. How any new area code that this Commission may establish through a geographic split may last for as much as 8 years and as little as 4 years.

Two solutions have been proposed. The first would split the 412 geographic area into two separate area codes. The geographic split would require a substantial number of families and businesses to learn the new area code. Additionally, every business in the new area code would have to pay for new company literature, stationery and advertisements with the new area code number.

If the geographic split is maintained as the normal policy response to number exhaustion, consumers will be squeezed more rapidly into smaller geographic areas that eventually may be little bigger than zip codes. Moreover, on an increasingly frequent schedule, some consumers will have to expend funds to update stationery and advertising to reflect yet another area code.

L-52
June 20, 1996
Page 3

The second solution is called the overlay plan. An overlay would assign a new area code to the same geographic area and require all phone calls to be made dialing 10 digits as opposed to the current system of 7 digit dialing. The overlay plan would allow for the unlimited expansion of 10 digit telephone numbers. It, however, will also inconvenience many consumers.

In a highly mobile society, the telecommunications network must have the ability to let people keep the same telephone number even when they move or change phone companies.

Number portability has also been identified as one of the most important technological advancements necessary to achieve real competition for local exchange telephone customers. This Commission noted in the recent NTS Application that number portability was essential to local telephone competition. Without number portability, most customers will not switch phone companies, since a change of phone companies would require a change of numbers.

The overlay plan has been criticized as anti-competitive by competitive local exchange companies (CLBCs), because it would disproportionately affect their customers. The CLBCs also do not believe a permanent number portability solution will be in place by the time relief is necessary for the 412 area code. This criticism should not be ignored. Competition is vital to Pennsylvania's telecommunications future, and this Commission is required to promote and protect competition by Chapter 30.

If number portability is not available to allow customers in the existing 412 area code to retain those numbers, the overlay plan would, indeed, be highly anti-competitive. The interim number portability utilizing call forwarding technology is not a good long-term solution, because it penalizes the CLBCs by imposing a cost only on the CLBCs.

On July 13, 1995, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking in CC Docket No. 95-116 seeking comments on technical and policy issues relating to number portability. On March 14, 1996, the FCC issued a Public Notice seeking comment on how the passage of the 1996 Telecommunications Act may affect development of number portability. Aggressive action on the part of the FCC and this Commission on deployment of a permanent number portability system

L-59
June 20, 1996
Page 3

is essential to the success of the overlay plan and local exchange competition in Pennsylvania.

If the Petitioners cannot guarantee by July 1, 1997 the existence of a permanent number portability system before the need to implement a new numbering system for the 412 area code, then the geographic split plan should be used. So far, no such guarantee has been offered.

Given all these considerations, my preference would be to approve conditionally an overlay plan. I would condition approval on the existence of a permanent number portability system by July 1, 1997 which is the date by which a new area code must be in place. If this condition could not be met or guaranteed, then I would implement a geographic split.

Unfortunately, the majority of this commission is not willing to condition appropriately an overlay plan. Consequently, I cannot support the majority view.

Finally, to allow LECs to continue offering 7 digit dialing after implementation of the overlay plan makes the majority proposal seriously anti-competitive. As I understand the majority's proposal, an existing monopoly customer can maintain 7 digit dialing so long as they stay a customer of the local phone monopoly. If that customer were to switch to a new phone company and receive a new telephone number and area code, then the customer would have to start 10 digit dialing. Obviously, that is a substantial and unfair competitive advantage for the existing monopolies.

For these reasons, I dissent.

June 20, 1996

John Henger

JOHN HENGER, COMMISSIONER

CERTIFICATE OF SERVICE

I, John E. Ferguson III, do hereby certify that copies of the foregoing Opposition and Comments were sent, on this 7th day of March, 1997, via first-class mail, postage pre-paid, to the following:

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